Supreme Court, U.S.
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IN THE

Supreme Court of the United States

TERM, 1970

No. 832

J. D. WILHITE,

Petitioner,

versus

CITY OF MONROE,

Respondent.

PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF LOUISIANA.

J. CARL PARKERSON,
P. O. Box 15,
Monroe, Louisiana,
Attorney for Petitioner.

J. G. HAUSER, INC., "LEGAL PRINTERS", 441 GRAVIER ST., NEW ORLEANS, LA.

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PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF LOUISIANA.

J. D. WILHITE PRAYS THAT A WRIT OF CERTIORARI ISSUE TO REVIEW THE JUDGMENT OF THE SUPREME COURT OF LOUISIANA.

OPINIONS BELOW

There was no formal, written opinion of the decision in the City Court of the City of Monroe, Ouachita Parish, State of Louisiana, in CITY OF MONROE v. J. D. WILHITE. Its oral decision is contained in the record of the City Court proceedings, which is in the record of the Louisiana Supreme Court. The opinion of the Supreme Court of Louisiana, rendered on March 30, 1970, is reported at 233 So. 2d 535 (1970) and set forth herein at Appendix A, as attached.

JURISDICTION

The judgment of the Supreme Court of Louisiana, the highest court in which a decision could be had was entered on March 30, 1970. The judgment became final after fourteen (14) days, on April 13, 1970, pursuant to Rule XI § 1, of the Rules of the Louisiana Supreme Court. The jurisdiction of this Court is invoked under 28 U.S.C.A. § 1257.

CONSTITUTIONS, STATUTES AND CASES INVOLVED

Constitution of United States, Amendment VI
Constitution of United States, Amendment XIV
28 U.S.C.A. § 1257
Duncan v. State of Louisiana, 391 U.S. 145 (1968)
Code of Criminal Procedure, State of Louisiana, Article 24-6
City Code of Monroe, State of Louisiana, Section 24-6
City Code of Monroe, State of Louisiana, Section 24-8
City Code of Monroe, State of Louisiana, Section 1-8

QUESTION PRESENTED

Is a defendant who is prosecuted by the City of Monroe for violation, arising out of a single act, of two (2) City ordinances with an aggregate possible penalty of one (1) year imprisonment and or ONE THOUSAND ($1,000.00) DOLLARS fine, entitled to the protection of the Constitutionally guaranteed right to a trial by jury under the rule announced by this Court in *Duncan v. State of Louisiana*, 391 U.S. 145?

STATEMENT OF THE CASE

This case originated in the Monroe City Court. The defendant, J. D. Wilhite, was charged by affidavit with

violating city ordinances by driving a motor vehicle while under the influence of intoxicants and speeding. He was tried, over his objection, without the benefit of a jury on the question of guilt, found guilty of both charges, and sentenced to fines of FOUR HUNDRED THIRTY-FIVE ($435.00) DOLLARS and FIFTEEN ($15.00) DOLLARS, respectively, plus TEN ($10.00) DOLLARS costs of Court on each charge.

Bill of Exception Number One (1) was reserved to the overruling by the trial judge of the motion for jury trial, or the objection to being tried without a jury. The defendant was tried by the judge alone.

Under the ordinances of the City of Monroe, as per the trial judge's statement for the record, the maximum penalty to which the defendant was exposed was ONE THOUSAND ($1,000.00) DOLLARS in fines, plus court costs, and/or one (1) year in jail. The city ordinance fixes the maximum penalty for driving while intoxicated at FIVE HUNDRED ($500.00) DOLLARS and or six (6) months in jail, and the maximum penalty for speeding at FIVE HUNDRED ($500.00) DOLLARS and or six months in jail.

The appeal to the Supreme Court of Louisiana was perfected and made timely and assigned Docket No. 50,040. A decision was rendered on March 30, 1970, affirming the conviction and sentence, rejecting all Bills of Exceptions. The judgment became final after the expiration of fourteen (14) days on April 13, 1970, according to Rule XI § 1 of the Rules of the Louisiana Supreme Court.

The Supreme Court of Louisiana, through Justice Sanders, ruled that the decision of this Court in *Duncan*

v. State of Louisiana, 391 U.S. 145, 88 S. Ct. 1444, 20 L. Ed. 2d 491 (1968), does not require a jury trial where a defendant is prosecuted in a single trial for two (2) offenses, arising out of the same act, in which the aggregate possible penalty is one (1) year imprisonment and/or ONE THOUSAND ($1,000.00) DOLLARS in fines.

This case squarely puts the issue before this Court to decide whether or not the two (2) charges brought against the defendant, arising out of one (1) act on the defendant's part, meets the criteria of the serious crime alluded to by this Court in *Duncan v. State of Louisiana*, 391 U.S. 145 (1968), thereby requiring a trial by jury.

HOW THE FEDERAL QUESTION WAS RAISED

The defendant, prior to going to trial, objected to being tried without the benefit of a jury, and moved for a jury trial on both charges. The Court overruled the defendant's objection to going to trial without the benefit of a jury on both charges, and denied the motion for a jury, to which ruling a Bill of Exception was duly reserved by the defendant, and noted by the Court, as is more fully reflected by the complete note of evidence contained in the record of the Louisiana State Supreme Court.

REASONS FOR GRANTING THE WRIT

The Court below has decided a federal question of substance in a way not in accord with the applicable decisions of this Court, in that *Duncan v. State of Louisiana* held that the States cannot deny a request for a jury trial in serious criminal cases. This Court in *Duncan* did not purport to establish a definite line between serious and petty crimes. Indeed, this Court stated "(T)he boundaries of the petty offense category have always

been ill-defined, if not ambulatory . . . it is necessary to draw a line in the spectrum of crime, separating petty from serious infractions. This process, although essential, cannot be wholly satisfactory, for it requires attaching different consequences to events which, when they be near the line, actually differ very little." 391 U.S. 145 at 160-161.

Under the circumstances of this case, the line has been drawn by the City of Monroe at six (6) months imprisonment and/or FIVE HUNDRED ($500.00) DOLLARS for each "offense", presumably relying on this Court's statement that "Crimes carrying possible penalties up to six (6) months do not require a jury trial **if they otherwise qualify as petty offenses"**, emphasis added, 391 U.S. 145 at 159. Petitioner's case falls squarely within the emphasized qualifying language. He has been prosecuted before a judge alone in one (1) proceeding for two (2) offenses arising out of the same act with an aggregate possible penalty of one (1) year imprisonment and ONE THOUSAND ($1,000.00) DOLLARS in fines.

It is well established that the penalty authorized and not the penalty received is of major relevance in determining whether a crime is serious. 391 U.S. 145 at 159. Other most important factors are the law and practices in this nation, "In determining whether the length of the authorized prison term or the seriousness of **other** punishment is enough in itself to require a jury trial, we . . . refer to objective criteria, chiefly the existing laws and **practices** in this Nation", emphasis added. 391 U.S. 145 at 161.

The laws in the State of Louisiana and the City of Monroe have been adapted to the guidelines laid down in

Duncan. A number of misdemeanors now carry sentences reduced to six (6) months imprisonment and/or FIVE HUNDRED ($500.00) DOLLARS. However, the "practice" of "stacking" charges against a defendant as a result on one (1) act emphasizes the need for jury trial.

As a practical matter, a defendant has no choice but to consolidate these charges for trial. If he refuses, he incurs greater expense for attorney's fees. Nor can it be realistically said that he is receiving "separate trials" since the judge alone would hear both "cases" with identical parties, witnesses, and factual situations; all on the same trial day. In a consolidated trial, the defendant is being tried for a "serious crime" carrying possible penalties, as in this case, of One (1) year imprisonment and/or ONE THOUSAND ($1,000.00) DOLLARS without the benefit of a jury. Petitioner, in full accord with this Court, ". . . would not, however, assert that every criminal trial—or any particular trial—held before a judge alone is unfair . . .", 391 U.S. 145 at 158, however, "providing an accused with the right to be tried by a jury . . . (gives) him an inestimable safeguard against the corrupt or overzealous prosecutor and against the complaint, biased, or eccentric judge." 391 U.S. 145 at 158.

This Court should take notice of the insurance consequences of a conviction of driving while intoxicated. The insurance companies in the State of Louisiana are allowed to consider such conviction as evidence of additional risk and raise the cost of insurance to an almost prohibitive amount. This is by virtue of state law and amounts to an increased penalty imposed upon the defendant, without the benefit of a jury trial on the question of guilt. These charges inherently involve opinion testimony by persons (police officers) with whom the

Court has daily contact, and upon whom the Court is partially dependent. The penalty to which the defendant is exposed depends solely upon the number of charges the same police officers decide to file, often as many as four (4), and almost always no less than two (2). This combination exposes defendants to **serious results,** and the protection of a jury trial is not too much to request under such circumstances.

CONCLUSION

To protect the rights of petitioner, it is respectfully submitted that this petition for certiorari should be granted.

Respectfully submitted,

J. CARL PARKERSON,
P. O. Box 15,
Monroe, Louisiana,
Attorney for Petitioner.

STATE OF LOUISIANA
PARISH OF OUACHITA

J. CARL PARKERSON, being duly sworn, deposed and said that he is the Attorney for the Appellant-Petitioner in the above entitled and numbered action and that the Appellee-Respondent, the City of Monroe, Louisiana, was served with a true and correct copy of the petition for a writ of certiorari on or before the 22 day of June, 1970.

/s/ J. CARL PARKERSON
J. CARL PARKERSON

SWORN TO AND SUBSCRIBED before me this 22 day of June, 1970.

/s/ DENNIE M. FARRAR
NOTARY PUBLIC

APPENDIX A

Received
Apr 1 1970
J. Carl Parkerson,
Attorney

SUPREME COURT OF LOUISIANA
Office of Clerk
301 Loyola Ave.
Room No. 220
New Orleans, Louisiana 70112

Dear Sir:

Attached you will find copy of opinion in a case which you handled.

The judgment in this case will become final at the expiration of fourteen (14) days from the date appearing on the first page of the opinion, in conformity with the provisions of Section 1 of Rule XI of the Supreme Court, as revised and amended April 1, 1962, unless application for rehearing reaches this office and is filed within the delay provided. This opinion is sent to you for your convenience and should be returned to this office within ten days.

Cordially yours,
Harold A. Moise, Jr.
Clerk.

Monday Mar 30 1970

SUPREME COURT OF LOUISIANA

NO. 50,040

CITY OF MONROE

V.

J. D. WILHITE

ON APPEAL FROM THE CITY COURT OF THE CITY OF MONROE FOR THE PARISH OF OUACHITA, STATE OF LOUISIANA HONORABLE W. L. CROWE, JUDGE.

SANDERS, Justice.

The City of Monroe charged the defendant in separate affidavits with driving an automobile under the influence of alcohol in violation of Section 24-6 of the City Ordinances and driving in excess of the speed limit in violation of Section 24-8 of the City Ordinances. By agreement between the City Attorney and defense counsel, the cases were consolidated for trial. Defendant moved for a jury trial, relying upon the decision of the United States Supreme Court in Duncan v. Louisiana, 391 U.S. 145, 88 S. Ct. 1444, 20 L. Ed. 491 (1968). The City Judge overruled the motion. After trial, the City Judge found the defendant guilty of both charges. The senteneed him to pay a fine of $425.00 and costs on the charge of driving under the influence of alcohol and a fine of $15.00 and costs on the charge of speeding.

Defendant appealed, relying upon the Bill of Exceptions reserved to the denial of a jury trial.

Under the City Ordinances each of the two charges has a maximum penalty of six months imprisonment and a $500.00 fine. Defendant contends that since the aggregate sentence was one year imprisonment and a $1000.00 fine, he is entitled to a jury trial.

In Duncan v. Louisiana, supra, the United States Supreme Court held the Fourteenth Amendment required a jury trial for all "serious crimes" in state courts. From its holding, the court excluded petty offenses, those punishable by no more than six months imprisonment and a $500.00 fine. See State v. Orr, 253 La. 752, 219 So. 2d 775.

After the Duncan decision, the Louisiana Legislature amended[1] Article 779 of the Louisiana Code of Criminal Procedure to read as follows:

> "A defendant charged with a misdemeanor in which the punishment *may* be a fine in excess of five hundred dollars or imprisonment for more than six months shall be tried by a jury of five jurors, all of whom must concur to render a verdict; provided, however that a defendant charged with such an offense may waive a trial by jury and elect to be tried by the court." (Italics ours).

No justification can be found in the constitutional and statutory authority for aggregating the penalties authorized for two or more separate offenses to determine the right to a jury trial. The right to a jury trial is tested by the punishment authorized for the particular offense. The consolidation of the cases for trial does not alter this rule. Consolidation is a procedural device to conserve trial time. See LSA-C. Cr. P. Art. 706.

In the present case, neither of the two offenses carried a greater punishment than a fine of $500.00 or six months imprisonment. Hence, under Article 779 of the Louisiana Code of Criminal Procedure, a jury trial is unauthorized.

For the reasons assigned, the conviction and sentence are affirmed.

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[1] Act No. 635 of 1968.